

This week in Washington DC has been a particularly busy one for policymakers in the financial services sector. Most significantly, Senate Banking Committee Chairman Richard Shelby (R-AL) introduced a sweeping legislative package of financial regulation reform. In addition to Chairman Shelby's long-anticipated first salvo, it is a week full of hearings at the House Financial Services Committee, as well as meetings of both the Securities and Exchange Commission's (SEC) Equity Market Structure Advisory Committee and Commodity Futures Trading Commission (CFTC) Global Markets Advisory Committee. Additionally, the House Agriculture Committee noticed a markup of legislation to reauthorize the Commodity Exchange Act and SEC Commissioner Dan Gallagher announced that he is resigning.

## 1. Chairman Shelby's Legislative Reforms of Financial Regulation

After apparently deciding not to try to reach bipartisan consensus on targeted relief for community and regional banks, on May 12, 2015, Chairman Shelby released a draft of his highly-anticipated legislation that calls for broad reforms of financial regulation. The bill, which comes in at more than 200 pages, includes eight titles, which address: (1) regulatory relief and consumer access to credit; (2) systemically important bank holding companies (BHC); (3) the Financial Stability Oversight Council's (FSOC) designation process for nonbank financial companies; (4) the regulatory framework for the insurance industry; (5) the Federal Reserve; (6) improving access to capital and tailoring regulations in the financial markets; (7) the government-sponsored enterprises (GSEs); and (8) technical corrections to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

Committee Democrats, who "are not at all happy" about the process thus far, sent a letter to Chairman Shelby last week, expressing their "concern and disappointment" with his plan to conduct a markup "without giving all committee Democrats time to analyze and review" the legislation. While Chairman Shelby has stated that he had hoped to be able to shore up Democratic support for the legislation by delaying the markup for a week to May 21, 2015, his efforts appear to have been unsuccessful, as Ranking Member Sherrod Brown (D-OH) has already issued a statement that the bill goes too far and is "a sprawling industry wish list of Dodd-Frank rollbacks."

Among the myriad of reforms proposed in the legislation, several provisions of note include:

- **Ombudsman:** Establishes an Office of the Ombudsman in the Federal Financial Institutions Examination Council. The Office would receive and investigate complaints from financial institutions.
- **Impact of Regulations:** Requires the federal financial regulators to consider:
  - Dodd-Frank regulations as part of their Economic Growth and Regulatory Paperwork Reduction Act review; and
  - The impact of regulations on financial institutions.
- **FSOC Changes:** The bill revises FSOC's authority and specifically:
  - Replaces the existing framework, where all BHCs with more than US\$50 billion in consolidated assets are automatically considered systemically important financial institutions (SIFIs). The bill would instead require the Federal Reserve and FSOC to evaluate the BHCs with more than US\$50 billion and less than US\$500 billion in total consolidated assets for systemic designation based on certain criteria.
  - Requires FSOC to make certain public disclosures, including with respect to designation methodologies used for identifying companies.
  - Gives access to FSOC (to attend meetings and review materials) for the members of the governing bodies of the:
    - Board of Governors of the Federal Reserve;
    - SEC;
    - Federal Deposit Insurance Corporation;
    - CFTC; and
    - National Credit Union Administration.
  - Increases transparency of the FSOC designation process, allowing SIFIs to address the risks and concerns identified by FSOC. In particular, the bill requires additional notices and detailed explanations of why FSOC is considering designation. The bill also states that FSOC must provide opportunities for SIFIs to meet with FSOC and analyze remedial plans submitted by the SIFI. Finally, the bill requires FSOC to provide the company's primary regulator an opportunity to assess and respond to FSOC's analysis of the company and take regulatory action, if appropriate.
  - Limits the emergency powers of FSOC.
- **Insurance Regulation:** The bill establishes an advisory committee on insurance matters at the Federal Reserve. It also sets forth the sense of Congress, which is non-binding, on insurance regulation, as follows:
  - Sense of Congress that the McCarran-Ferguson Act of 1945 remains the preferred approach to regulating the business of insurance; and
  - Sense of Congress that the Federal Reserve, the Federal Insurance Office, and state insurance regulators should develop consensus positions in international discussions on capital standards for insurers and increase transparency in those discussions.
- **Federal Reserve:** Among other things, the bill requires semi-annual monetary policy reports to Congress by the Federal Reserve. It also requires the Federal Reserve to conduct a study and prepare a report to Congress every two years regarding its plan to regulate and supervise non-bank SIFIs. Separately, the bill requires the

President of the New York Federal Reserve Bank to be appointed by the President of the United States and confirmed by the Senate due to the unique role of the Federal Reserve Bank of New York in the Federal Reserve System.

- **SEC and CFTC:**

- The bill directs the SEC to revise regulations requiring an issuer to furnish investors with additional specified disclosures regarding compensatory benefit plans if the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds US\$10 million (currently US\$5 million), indexed for inflation every five years.
- The bill also amends the Securities Exchange Act of 1934 and the CEA to repeal the indemnification requirements added by Dodd-Frank for regulatory authorities to obtain access to swap data. Foreign regulators and regulatory entities have indicated concerns regarding the indemnification requirements of Dodd-Frank, so this section removes such requirements to ensure data can be shared with foreign regulators.

- **GSE Reform:**

- The bill prohibits the uses of increases in a guarantee fee charged by GSEs Fannie Mae and Freddie Mac to offset outlays or reductions in revenues for any purpose other than enterprise business functions or housing finance reform as passed by the Congress in the future.
- It also prohibits the sale, or other disposition, of preferred stock in Fannie Mae or Freddie Mac, by the US Treasury, unless it is directed to do so by Congress.
- The bill directs the Federal Housing Finance Agency (FHFA) Director to establish a committee to advise on decisions regarding the development of market infrastructure. The bill also directs the FHFA Director to report to Congress regarding the development of the Common Securitization Platform, which should transition, after five years, to a nonprofit entity available to approved issuers other than the GSEs.

As we have [previously highlighted](#), with a narrowly divided Senate and a President who is likely to veto any proposals that are perceived as paring down Dodd-Frank, the likelihood that substantial changes to Dodd-Frank are enacted is unlikely. However, we anticipate that Republicans will continue to push to approve legislation on various targeted financial reform issues and may use this proposal as their negotiating point. Notably, in response to Chairman Shelby's legislation, House Financial Services Committee Chairman Jeb Hensarling (R-TX) applauded the bill, expressing that he "hope[s] we can at least find some common ground with Democrats on providing some regulatory relief for our struggling community banking institutions."

## 2. CEA Reauthorization

Separately, as part of its continued work related to the reauthorization of the CEA, the House Agriculture Committee has announced that it will hold a markup on May 14, 2015 of legislation to reauthorize the CEA. Over the past few months and in preparation for the markup, the Commodity Exchanges, Energy, and Credit Subcommittee has held hearings on reauthorizing the CFTC, inviting CFTC Commissioners, end-users, and other market participants (including a derivatives clearing organization, exchange, and swap execution facility) to share their perspectives on the regulatory efforts of the Commission.

The Committee's efforts are a continuation of lawmakers' work last year, who were ultimately unable to pass legislation to reauthorize the CEA, which expired in September 2013. While the legislative text is not yet available, it is likely that many aspects of the debate last Congress – including concerns regarding insufficient funding for the CFTC and administrative burdens that have the potential to hinder the agency's ability to effectively regulate the market – will spill over into the debate surrounding this year's proposal.

## 3. Commissioner Gallagher to Step Down

Additionally, in somewhat of a surprise move, Republican SEC Commissioner Daniel Gallagher – who has been a particularly vocal opponent of certain aspects of the Dodd-Frank regulatory regime – this week announced that he is resigning from the agency. Despite his announcement, Chairman Gallagher has indicated that he will continue on in his role until a successor is confirmed. Of note, the term for Democratic SEC Commissioner Luis Aguilar ends next month, leaving the Obama Administration to nominate two individuals to fill the positions – a task that may prove somewhat challenging with a Republican-controlled Senate.

As both legislative and regulatory developments continue to occur in the financial services sector, the Squire Patton Boggs [Financial Services Public Policy Group](#) stands ready to provide its unique analysis and advocacy capabilities to interested stakeholders.

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